

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA,

v.

DONALD GARDNER, JR.,

Defendant.

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**15-CR-179-FPG-HKS**

**NOTICE OF MOTION**

**MOTION BY:**

Frank R. Passafiume, Assistant Federal Public  
Defender, Attorney for Donald Gardner, Jr.

**DATE, TIME & PLACE:**

Before the Honorable H. Kenneth Schroeder, Jr.,  
United States Magistrate Judge, Robert H. Jackson  
United States Courthouse, 2 Niagara Square,  
Buffalo, New York 14202, **on the papers.**

**SUPPORTING PAPERS:**

Affirmation of Assistant Federal Public Defender  
Frank R. Passafiume, dated March 8, 2017.

**RELIEF REQUESTED:**

Evaluation of the defendant to determine whether  
he is competent to stand trial (18 U.S.C. § 4241)  
and whether he was insane at the time of the offense  
(18 U.S.C. § 4242).

**DATED:**

March 8, 2017, Buffalo, New York.

Respectfully submitted,

**/s/Frank R. Passafiume**

Frank R. Passafiume  
Assistant Federal Public Defender  
Federal Public Defender's Office  
300 Pearl Street, Suite 200  
Buffalo, New York 14202  
(716) 551-3341; 551-3346 (fax)  
frank\_passafiume@fd.org  
*Attorney for Donald Gardner, Jr.*

**TO:** Mary C. Baumgarten  
Assistant United States Attorney

Brian Mamizuka  
United States Probation Officer

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**AFFIRMATION**

**FRANK R. PASSAFIUME, ESQ.**, affirms under penalty of perjury that:

1. I am an attorney with the Federal Public Defender's Office located at 300 Pearl Street, Suite 200, Buffalo, New York 14202, and I represent the defendant, Donald Gardner, Jr., in the instant matter.

2. I submit this Affirmation in support of my request that the Court order a mental health examination to determine Mr. Gardner's competency to stand trial and whether he was insane at the time of the offense per 18 U.S.C. §§ 4241 and 4242 respectively.

3. This request is based upon my observations, the evaluations previously submitted to the Court by Dr. Rutter, Dr. Cervantes, and Ms. Barletta, LMSW, the defendant's school records, and the various determinations and observations made by the Court during the bail

revocation hearing held on February 21, 2017, and the subsequent oral argument on the motion for reconsideration held on March 8, 2017.

4. The government is not opposed to this request.
5. A proposed Order will be submitted separately to the Court.

**WHEREFORE**, it is respectfully requested that the Court order a mental health evaluation under 18 U.S.C. §§ 4241 and 4242.

**DATED:** March 8, 2017  
Buffalo, New York

Respectfully submitted,

**/s/Frank R. Passafiume**

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**TO:** Mary C. Baumgarten  
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